**Seton Medical Center *and* Northern California Association of Nurses, UNAC, NUHHCE, AFSCME, AFL–CIO, Petitioner.** Case 20–RC–16981

April 28, 1995

DECISION ON REVIEW AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND TRUESDALE

On February 9, 1994, the Regional Director for Region 20 issued a Decision and Order in the above-entitled proceeding, in which he dismissed the petition because he found that a contract bar exists. In accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's decision, contending that the Regional Director erred in finding that the petition was barred by a collective-bargaining agreement between the Employer and the Intervenor (California Nurses Association). The Intervenor filed an opposition to the Petitioner's request for review.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Petitioner's request for review is granted as it raises substantial issues warranting review. We have carefully considered the entire record in this proceeding with respect to the issue under review and find that no contract bar exists here because there is no signed document or documents evidencing the finalization of the parties' negotiation process and memorializing the overall terms of their collective-bargaining agreement.

Seton Medical Center is an acute care hospital whose staff nurses have been represented by the Intervenor for approximately 46 years. A collective-bargaining agreement between the Employer and Intervenor, effective from June 1, 1991 through May 31, 1993, provided for automatic renewal unless either party desired to change, modify, or terminate the agreement. Pursuant to this provision, the Employer and the Intervenor reopened their contract and commenced bargaining regarding modifications to the contract in the spring of 1993. As was their past practice, the parties went through a process of reaching tentative agreements on specific issues which were not considered binding until two conditions were met—an overall settlement was reached on all outstanding reopened issues and the overall settlement was ratified by the Intervenor's membership. The parties initialed and/or signed and dated the tentative agreements as accord was reached on each issue.

The record contains tentative agreements reached on May 13, May 18, June 1, June 4, and July 31, 1993. The parties had reached agreement on all outstanding issues as of July 31, 1993. The Intervenor's bargaining representative prepared an unsigned document containing a summary of the tentative agreements reached for presentation to the Intervenor's membership, and the members ratified the provisions on August 3, 1993. The Employer thereafter posted a notice informing all employees of its new agreement and implemented the provisions of the contract. No further negotiations were scheduled. As was also the parties' past practice, the Employer's representative agreed to prepare a formal document for execution by the parties.

Before the Employer's representative had yet prepared a formal document, the Intervenor's chief contract negotiators left the Intervenor's employ and went to work for the Petitioner. As of October 1993, the Petitioner had seven staff members, all of whom were formerly employed by the Intervenor. On October 4, 1993, before a formal contract document had been compiled and executed, the Petitioner filed the instant petition seeking to represent the Employer's nurses.

In order for an agreement to serve as a bar to an election, the Board's well-established contract bar rules require that such agreement satisfy certain formal and substantive requirements. As set forth in the seminal case clarifying these requirements, *Appalachian Shale Products*, 121 NLRB 1160 (1958), the agreement must be signed by the parties prior to the filing of the petition that it would bar and it must contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. The agreement, however, need not be embodied in a formal document. An informal document or documents, such as a written proposal and a written acceptance, which nonetheless contain substantial terms and conditions of employment, are sufficient if signed. *Appalachian Shale*, supra at 1162; *Georgia Purchasing*, 230 NLRB 1174 (1977).

We find that while the initialing of the tentative agreements here adequately establishes the parties' assent to those provisions, there exists no signed document which identifies the totality of the parties' agreement and shows that their contract negotiations were concluded. The single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures. *USM Corp.*, 256 NLRB 996 (1981). Here, there is no document, formal or informal, reflecting the parties' full agreement.

[1] The Employer took no position on the issue in this case.

It is instructive in this regard to compare this case with a companion case involving the same Petitioner and Intervenor, but a different hospital employer. In *St. Mary's Hospital*, 317 NLRB No. 9, issued on this same date, the parties followed the same bargaining approach of signing and dating tentative agreements on each issue when accord was reached. There, unlike here, when agreement had been reached on all issues which had been reopened in the prior contract, the parties signed a comprehensive tentative agreement. That agreement, designated as ''6/19/93 Settlement,'' set forth each of the 15 issues which had been negotiated and the manner in which they were to be implemented, incorporating by reference the signed and dated tentative agreements for the individual issues previously resolved. Like the Regional Director here, the Acting Regional Director in *St. Mary's Hospital* found a contract bar exists. Unlike here, we denied the Petitioner's request for review of the Acting Regional Director's decision. The critical factor differentiating this case and *St. Mary's Hospital*, and warranting a different result, is that here the parties signed no such document identifying the terms of a comprehensive collective-bargaining agreement. In the absence of a written document or documents (e.g., a document adequately identifying the contract terms might be signed by one party and accepted by the other party in a separate signed document), there is no evidence of the parties' agreement sufficient to bar the petition.

The overall terms of the contract reached by the parties here may be established only through the kind of oral testimony eschewed in *Appalachian Shale* for contract bar purposes. Were the Board to affirm the Regional Director's finding of a contract bar in this case, it might open to litigation the entire question of whether parties who had initialed tentative individual provisions in bargaining had or had not reached agreement on all matters. It is clear that the parties did not intend the individual provisions on which agreement had been reached to become effective until and unless agreement on a total package was achieved. Moreover, to find that signed piecemeal provisions may bar a petition filed by a rival union might in some instances invite collusion by incumbent unions and employers. It could also result in substantial delays in resolving employees' representational interests, in contravention of one of the primary goals of *Appalachian Shale*—the more expeditious disposition of representation cases. In striking the balance between stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives, we think that the relatively minor requirement that parties which have reached agreement sign a document (or exchange signed documents) reflecting that agreement and showing that they have reached accord on a total contract is still necessary and appropriate to establish a contract bar.[2]

In sum, we conclude that the parties' written documents are insufficient to bar the election petition here not because the provisions were not sufficiently complete but because there is no signed writing specifying the overall terms of the contract. This is precisely the kind of circumstance *Appalachian Shale* was directed at avoiding. After what is now almost 40 years of contract bar policy, the parties should be expected to adhere to this relatively simple requirement.

Accordingly, the Regional Director's conclusion that the petition is barred by an existing collective-bargaining agreement is reversed, the petition is reinstated, and the matter is remanded to the Regional Director for further appropriate action.

[2] Contrary to the Petitioner, however, we do not find that, had the Employer and the Intervenor initialed an overall settlement incorporating the tentative agreements, there would be no bar because the contract was incomplete, or the parties had not actually executed a formal agreement. We believe the Regional Director adequately distinguished precedent in this regard, and do not find that *Branch Cheese*, 307 NLRB 239 (1992), reversed Board precedent.